

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ESTEBAN CUBILLOS,

Plaintiff,

v.

KILOLO KIJAKAZI,  
Acting Commissioner of Social Security,<sup>1</sup>

Defendant.

Case No. 1:21-cv-00465-SKO

**ORDER THAT DEFENDANT FILE A  
WRITTEN STATEMENT SHOWING  
CAUSE WHY PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT SHOULD  
NOT BE DEEMED UNOPPOSED OR  
THAT DEFENDANT FILE THE CROSS-  
MOTION FOR SUMMARY JUDGMENT**

**14-DAY DEADLINE**

On March 19, 2021, Plaintiff, represented by counsel and proceeding *in forma pauperis*, filed the present action in this Court. (Doc. 1.) Plaintiff seeks review of the Commissioner's denial of their application for benefits. (*Id.*)

The Court entered a Scheduling Order on April 1, 2022 (Doc. 13), which was enlarged by stipulation of the parties on several occasions. (*See* Docs. 18, 19, 20, 21, 25, & 26.) The current case schedule set the deadline for Plaintiff's motion for summary judgment on January 4, 2023 (*see* Doc. 26), with Defendant's cross-motion for summary judgment due "[w]ithin 45 days after service" of Plaintiff's motion. (*See* Doc. 13.) Plaintiff timely filed their motion for summary judgment on

<sup>1</sup> On July 9, 2021, Kilolo Kijakazi was named Acting Commissioner of the Social Security Administration. *See* <https://www.ssa.gov/history/commissioners.html>. She is therefore substituted as the defendant in this action. *See* 42 U.S.C. § 405(g) (referring to the "Commissioner's Answer"); 20 C.F.R. § 422.210(d) ("the person holding the Office of the Commissioner shall, in [their] official capacity, be the proper defendant").

1 January 4, 2023. Defendant's cross-motion for summary judgment was due within 45 days—on  
2 February 17, 2023.

3 On February 17, 2023, Defendant failed to file and serve their cross-motion for summary  
4 judgment with the Court and on opposing counsel, and to date, no cross-motion has been filed and  
5 served. (*See* Docket.) Defendant is, therefore, ordered to show cause, if any, why Plaintiff's motion  
6 for summary judgment should not be deemed unopposed for Defendant's failure to comply with the  
7 Court's current case schedule. Alternatively, Defendant may file the cross-motion for summary  
8 judgment.

9 Accordingly, it is HEREBY ORDERED that:

10 1. By no later than **14 days of service of this Order**, Defendant shall **either**:

- 11 a. file a written response to this Order showing cause why Plaintiff's motion for  
12 summary judgment should not be deemed unopposed for Defendant's failure  
13 to comply with the current case schedule; or  
14 b. file the cross-motion for summary judgment.

15 **Failure to respond to this Order to Show Cause will result in the Court deeming**  
16 **Plaintiff's motion for summary judgment unopposed.**

17 IT IS SO ORDERED.  
18

19 Dated: **March 2, 2023**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE